

# STATE OF COLORADO

## COLORADO DEPARTMENT OF HEALTH

*Dedicated to protecting and improving the health and environment of the people of Colorado*

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Roy Romer  
Governor

Patricia A. Nolan, MD, MPH  
Executive Director

January 18, 1994

Mr. David L. Sell  
McMichael, Burlingame, Multz & Lipton  
1580 Lincoln St., Ste. 900  
Denver, CO 80203

CERTIFIED MAIL NO.: P 299 096 552

RE: Notice of Violation and Cease and Desist Order  
Rico Development Corporation  
CDPS Permit No.: CO-0029793  
Dolores County, Colorado

Dear Mr. Sell:

Enclosed is a signed copy of the Notice of Violation and Cease and Desist Order issued in this matter. The basis for the notice is defined under the Findings of Fact.

This action could result in the imposition of civil penalties by the Department as provided by 25-8-608, C.R.S. (1989 Repl. Vol. 11A and 1992 Supp.). The maximum civil penalty allowed by the statute is \$10,000 per day of violation.

Should you have any questions, please contact this office at (303) 692-3590.

Sincerely,

Robert J. Shukle, Chief  
Permits and Enforcement Section  
WATER QUALITY CONTROL DIVISION

RS/kk

cc: Jim Horn, D.E., WQCD  
Amelia Whiting, AGO  
EPA, Region VIII  
Local Health Department  
MS-3

BEFORE THE DEPARTMENT OF HEALTH

DIVISION OF ADMINISTRATION

STATE OF COLORADO

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NOTICE OF VIOLATION AND CEASE AND DESIST ORDER

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IN THE MATTER OF:     RICO DEVELOPMENT CORPORATION  
                             CDPS PERMIT NO. CO-0029793  
                             DOLORES COUNTY, COLORADO

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TO:   Rico Development Corporation

Pursuant to the authority vested in the Division of Administration of the Colorado Department of Health ("the Division") by 25-8-301 to 308, C.R.S. (1989 Repl. Vol. 11A and 1992 Supp.), which authority has been delegated to me by the Executive Director of the Department, I hereby make the following Findings of Fact and issue the following Notice of Violation and Cease and Desist Order:

FINDINGS OF FACT

1. Rico Development Corporation ("RDC") operates the Rico project, which is an inactive, underground metals mine ("the mine") in Rico, Colorado.
2. The mine is the subject of Colorado Discharge System Permit No. CO-0029733 ("the permit"), which was effective on June 13, 1988 and has been extended past its expiration date of December 31, 1992 pending permit renewal.
3. Under the terms and conditions of the permit, wastewater associated with the St. Louis tunnel is authorized to be discharged, following treatment, from outfall 002 into the Dolores River.
4. Pursuant to the requirements of the permit, RDC is required to sample and analyze the effluent being discharged at outfall 002 at least monthly. RDC submitted monthly Discharge Monitoring Reports ("DMRs") to the Division regarding the levels of pollutants in the effluent which included the following data:

9. The third quarter WET tests were completed by August 28, 1993; the lab report signed by September 3, 1993; but the Division was not notified of the test failure until receipt of the DMRs on September 30, 1993.

10. In Part I.B.4., the permit requires RDC to begin accelerated WET testing of the discharge within 7 days of becoming aware of the toxicity.

11. In a letter dated August 30, 1993, the Division instructed RDC to commence accelerated WET testing for both species in response to the second quarter WET test failures.

12. The first discharge effluent sample for the required accelerated testing was not collected until October 12, 1993.

13. On June 29, 1993, the Division issued a Notice of Violation and Cease and Desist Order ("NOV&CDO") to RDC alleging effluent violations of the permit. A copy of the NOV&CDO is attached as Exhibit A and incorporated herein by reference.

14. Item 2 of the CDO ordered RDC to submit "a detailed statement of the measures you have taken or plan to take to achieve immediate and long term compliance," in writing, within 15 days after issuance of that order. This "Measures to Comply" statement, due on or about July 15, 1993, has not been received by the Division.

15. Item 3 of the CDO ordered RDC to submit, "in writing, within 10 days after issuance of this order, a statement of your intent to comply herewith." This statement was due on or about July 10, 1993. The statement accepted as the "Intent to Comply" was received by the Division on August 9, 1993.

16. On May 5, 1993, the District Engineer conducted the Annual Inspection of RDC's wastewater treatment facilities. During this inspection, as documented in his June 18, 1993, letter to RDC, the District Engineer observed:

"The surcharged manhole allowing untreated wastewater to enter the old cyanide heap leach basin may be contaminating groundwater. There are torn sections of this liner indicating it is not fit to hold wastewater. Additionally, the basin water elevation appears constant indicating wastewater is leaving at the same rate that it is entering. This bypass [of the wastewater treatment system] must be eliminated immediately."

17. In a letter dated June 18, 1993, Certified Mail Number P 189 604 392, the District Engineer cited violations of the Colorado Water Quality Control Act discovered during the annual inspection performed on May 5, 1993. A written response was requested within 20 days of receipt of that letter, providing RDC's plan to bring this wastewater treatment facility into compliance.

18. In a letter dated November 29, 1993, Certified Mail Number P 189 604 420, the District Engineer documented that he had not received the response requested by the June 18, 1993, letter. He extended the response time by another 20 days. As of the date of issuance of this NOV, the concerns outlined in the June 18, 1993, letter have not been addressed.

19. In Part II.B.2., the permit requires the permittee to provide the Division, within a reasonable time, such information as requested in the June 18, 1993, letter mentioned above to determine compliance with the permit.

20. The Dolores River is "state waters" as defined by 25-8-103(19), C.R.S. (1989 Repl. Vol. 11A and 1992 Supp.).

21. Outfall 002 constitutes a "point source" as defined by 25-8-103(14), C.R.S. (1989 Repl. Vol. 11A and 1992 Supp.).

#### NOTICE OF VIOLATION

You are hereby notified that the facts stated above constitute violations of Part I.A of the permit as follows:

The 30-day average loading of total recoverable silver in the effluent of 0.1349 lbs/day in August 1993, and 0.011 lbs/day in September 1993, exceed the 30-day average loading allowed in the permit of 0.0081 lbs/day.

The daily maximum loading of total recoverable silver in the effluent of 0.2452 lbs/day in August 1993, exceeds the daily maximum loading allowed in the permit of 0.016 lbs/day.

The 30-day average loading of total recoverable zinc in the effluent of 17.6 lbs/day in May 1993, 62.5 lbs/day in June 1993, 15.8 lbs/day in July 1993, and 11.8 lbs/day in October 1993, exceed the 30-day average loading allowed in the permit of 9.5 lbs/day.

The daily maximum loading of total recoverable zinc in the effluent of 76 lbs/day in June 1993, exceeds the daily maximum loading allowed in the permit of 19 lbs/day.

The 30-day average loading of total recoverable cadmium in the effluent of 0.3 lbs/day in June 1993, exceeds the 30-day average loading allowed in the permit of 0.12 lbs/day.

The daily maximum loading of total recoverable cadmium in the effluent of 0.40 lbs/day in June 1993, exceeds the daily maximum loading allowed in the permit of 0.24 lbs/day.

The 30-day average concentration of total suspended solids in the effluent of 24 mg/l in October 1993, exceeds the 30-day average concentration allowed in the permit of 20 mg/l.

The daily maximum concentration of total suspended solids in the effluent of 38 mg/l in October 1993, exceeds the daily maximum concentration allowed in the permit of 30 mg/l.

You are further notified that the facts stated above constitute violations of Part I.B.1. of the permit which states in relevant part:

"In order to obtain an indication of the probable compliance or noncompliance with the effluent limitations specified in Section A, the permittee shall monitor all effluent parameters at the following frequencies...

<u>Effluent Parameter</u>	<u>Measurement Frequency</u>
Total Recoverable Cadmium, lbs/day	2 X Monthly
Total Recoverable Copper, mg/l	2 X Monthly
Total Recoverable Lead, mg/l	2 X Monthly
Total Recoverable Silver, lbs/day	2 X Monthly
Total Recoverable Zinc, lbs/day	2 X Monthly"

You are further notified that the facts stated above constitute violations of Part I.B.4. of the permit which states in relevant part:

"If toxicity in excess of the acute toxicity level in Part I.A.2. is detected in any acute WET test conducted in accordance with the previous section, the permittee shall notify the Division verbally within 24 hours and in writing within 5 days of becoming aware of the toxicity. Within 7 days of becoming aware of the toxicity, the permittee shall then begin accelerated testing of the discharge."

You are further notified that the facts stated above constitute violations of Items 2 and 3 of the CDO issued June 29, 1993.

You are further notified that the facts stated above constitute violations of Part II.B.2. of the permit which states in relevant part:

"The permittee shall furnish to the Division, within a reasonable time, any information which the Division may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit."

### CEASE AND DESIST ORDER

Based upon the foregoing Findings of Fact and Notice of Violation, and pursuant to the provisions of 25-8-605, C.R.S. (1989 Repl. Vol. 11A and 1992 Supp.), I hereby order you to:

1. immediately take whatever measures necessary to cease and desist violating the Water Quality Control Act, 25-8-101 to 703, C.R.S. (1989 Repl. Vol. 11A and 1992 Supp.), the Permit, and regulations promulgated thereto;

2. submit to the Division, in writing, within 15 days after issuance of this order, a detailed statement of the measures you have taken or plan to take to achieve immediate and long term compliance with paragraph 1 of this order;

3. submit to the Division, in writing, within 10 days after issuance of this order a statement of your intent to comply herewith;

4. submit to the Division, within 30 days after issuance of this order, copies of all individual analytical results for each parameter listed in paragraph 4 of the Findings of Fact for each month a permit violation has been alleged; and

5. submit to the Division, in writing, within 10 days after issuance of this order, the notification requested in the District Engineer's June 18, and November 29, 1993, letters, of your course of action to bring this wastewater treatment facility into compliance.

Pursuant to section 25-8-603, C.R.S. (1989 Repl. Vol. 11A and 1992 Supp.), you are required to submit to the Division an answer admitting or denying each paragraph of the Findings of Fact and responding to the Notice of Violation. Section 603 also provides that the recipient of a Notice of Violation may request the Division to conduct a hearing to determine the validity of the Notice, including the Findings of Fact. Such request shall be filed in writing with the Division. Both the answer and the request for hearing, if any, shall be filed no later than 30 days after issuance of this order. The filing of an answer does not constitute a request for hearing. Absent such a request, the validity of the factual allegations and the Notice of Violation shall be deemed established in any subsequent proceeding. You are also advised that any person who violates any provision of any permit issued under 25-8-101 to 703, C.R.S. (1989 Repl. Vol. 11A and 1992 Supp.), or any provision of 25-8-101 to 703, C.R.S. (1989 Repl. Vol. 11A and 1992 Supp.) or any final Cease and Desist Order or Clean-Up Order shall be subject to a civil penalty of not more than \$10,000 per day for each during which such violation occurs. Further, any person who recklessly, knowingly, intentionally, or with criminal negligence discharges any pollutant into any state waters commits criminal pollution of state waters if such discharge is made in violation of any permit issued under 25-8-101 to 703, C.R.S. (1989 Repl. Vol. 11A and 1992 Supp.), or in violation of any Cease and Desist Order or Clean-Up Order issued by the Division. You are further advised that any person engaged in any operation or activity which results in a spill or discharge of oil or other substance which may

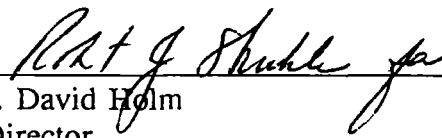
cause pollution of the waters of the state, shall notify the Division of the discharge. If said person fails to so notify, said person is guilty of a misdemeanor, and may be fined or imprisoned or both.

Nothing herein contained, particularly those portions requiring certain acts to be performed within a certain time, shall be construed as a permit or license, either to violate any provisions of the public health laws and regulations promulgated thereunder, or to make any discharge into state waters.

For further clarification of the rights of recipients of Notices of Violation, including the potential imposition of penalties and possible criminal liability, you are advised to consult the Water Quality Control Act, sections 25-8-101 to 703, C.R.S. (1989 Repl. Vol. 11A and 1992 Supp.)

Issued at Denver, Colorado, this 18th day of January, 1994.

COLORADO DEPARTMENT OF HEALTH  
Division of Administration

  
J. David Holm  
Director  
Water Quality Control Division

# STATE OF COLORADO

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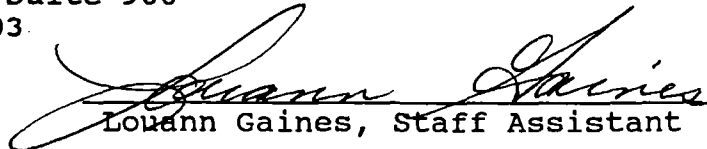
Patricia A. Nolan, MD, MPH  
Executive Director

### CERTIFICATE OF MAILING

This is to certify that a signed copy of the NOTICE OF VIOLATION AND CEASE AND DESIST ORDER IN THE MATTER OF RICO DEVELOPMENT CORPORATION; PERMIT NUMBER CO-0029793 IN DOLORES COUNTY, COLORADO was deposited in the mail on this 18TH day of JANUARY, 1994.

CERTIFIED MAIL NO: P 299 096 552

Mr. David L. Sell  
McMichael, Burlingame, Multz & Lipton  
1580 Lincoln Street, Suite 900  
Denver, Colorado 80203

  
Louann Gaines, Staff Assistant